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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,820	07/28/2003	Hidetaka Fujita	500.39462CX1	4361

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EXAMINER

DONOVAN, LINCOLN D

ART UNIT	PAPER NUMBER
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2832

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,820

Applicant(s)

FUJITA ET AL.

Examiner

Lincoln Donovan

Art Unit

2832

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

The drawings are objected to because insulative portions, housing 10, for example, must be cross-hatched as such. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fixed frame being provided on a yoke of the coil to serve as a support base for the toggle link must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, in line 1, applicant should clarify how the "power source-side terminal" forms the main circuit. In line 7, applicant should clarify the relationship of the fixed frame to the other components in the claim.

Regarding claim 2, it is not clear what conditions applicant intends the rotation of the moving contact support member “so as to bring said moving contact *into* and out of contact with said fixed contact, when an excess current flows through said coil.”

Regarding claim 3, the specific structure and arrangement of the frame, yoke and case relative to each other is unclear. It appears that applicant intends the yoke to be supported by the frame contradicting the trip lever being separated therefrom. It is not clear what applicant intends by “said yoke are held by a case.” Applicant should clarify the force interaction between the “moving contact is in contact with said fixed contact by said toggle link mechanism.”

Regarding claim 5, line 2, applicant should clarify how the “power source-side terminal” forms the main circuit. In lines 7-11, it is not clear what conditions applicant intends the rotation of the moving contact support member “so as to bring said moving contact *into* and out of contact with said fixed contact, when an excess current flows through said coil.” Applicant should clarify how the yoke serves as a support base from the fixed frame. In lines 12-13, there is no antecedent basis for “the coil in the disengaging device.”

Regarding claim 6, the specific structure and arrangement of the frame, yoke and case relative to each other is unclear. It appears that applicant intends the yoke to be supported by the frame contradicting the trip lever being separated therefrom. It is not clear what applicant intends by “said yoke are held by a case.” Applicant should clarify the force interaction between the “moving contact is in contact with said fixed contact by said toggle link mechanism.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rusch [US 4,222,019] in view of Brackett et al. [US 3,602,852].

Rusch discloses a circuit breaker [figure 1] comprising:

- opposing fixed and movable contacts [24, 26];
- line and load terminals [3, 4] connected to the contacts;
- a movable contact support member [25] holding the movable contact at one end thereof;
- an operating mechanism including a toggle mechanism [figure 1, column 4, lines 20-40];
- a coil [18] connected with the load terminal operatively connected to the moving contact;
- a coil yoke [16]; and
- a trip lever [19] of a disengaging device mounted in the yoke of the coil separated from the operating mechanism [figure 1].

Rusch disclose the instant claimed invention except for explicit showing of the operating mechanism being supported by a frame.

Brackett et al. disclose a circuit breaker [figure 4] having an operating mechanism supported on a frame mounted on bosses within a casing [figure 1, abstract].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the frame support design of Brackett et al. for the operating mechanism of Rusch in order to provide sufficient support and distribution for the force applied by the operating mechanism.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 09/764,289. Although the conflicting claims are not identical, they are not patentably distinct from each other because the trip lever does not need that specific support of 09/764,289.

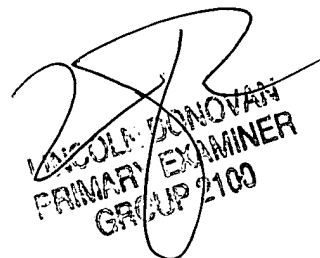
This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lincoln Donovan whose telephone number is (571) 272-1988. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin Enad can be reached on (571) 272-1990. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Idd


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